

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA,

Plaintiff,

v.

**Case No. 10-CR-039
Hon. Rudolph T. Randa**

CHRISTOPHER A. JOHNS,

Defendant.

JURY INSTRUCTIONS

THE FUNCTIONS OF THE COURT AND THE JURY

Members of the jury, you have seen and heard all the evidence and the arguments of the attorneys. Now I will instruct you on the law.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

Perform these duties fairly and impartially. Do not allow sympathy, prejudice, fear, or public opinion to influence you. You should not be influenced by any person's race, color, religion, national ancestry, or sex.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

THE EVIDENCE

The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence, and stipulations.

A stipulation is an agreement between both sides that certain facts are true or that a person would have given certain testimony.

TESTIMONY OF WITNESSES (DECIDING WHAT TO BELIEVE)

You are to decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all, as well as what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, you may consider, among other things:

- the witness's intelligence;
- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness's memory;
- any interest, bias, or prejudice the witness may have;
- the manner of the witness while testifying; and
- the reasonableness of the witness's testimony in light of all the evidence in the case.

WEIGHING THE EVIDENCE-INFERENCES

You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this an “inference.” A jury is allowed to make reasonable inferences. Any inferences you make must be reasonable and must be based on the evidence in the case.

DEFINITION OF “DIRECT” AND “CIRCUMSTANTIAL” EVIDENCE

Some of you have heard the phrases “circumstantial evidence” and “direct evidence.” Direct evidence is the testimony of someone who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a series of facts which tend to show whether the defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. You should decide how much weight to give to any evidence. All the evidence in the case, including the circumstantial evidence, should be considered by you in reaching your verdict.

WHAT IS NOT EVIDENCE

Certain things are not evidence. I will list them for you:

First, testimony and exhibits that I struck from the record, or that I told you to disregard, is not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded. This includes any press, radio, or television reports you may have seen or heard. Such reports are not evidence and your verdict must not be influenced in any way by such publicity.

Third, questions and objections by the lawyers are not evidence. Attorneys have a duty to object when they believe a question is improper. You should not be influenced by any objection or by my ruling on it.

Fourth, the lawyers' statements to you are not evidence. The purpose of these statements is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your memory is what counts.

ATTORNEY INTERVIEWING WITNESS

It is proper for an attorney to interview any witness in preparation for trial.

THE CHARGE - THE INDICTMENT

The indictment in this case is the formal method of accusing the defendant of offenses and placing him on trial. It is not evidence against the defendant and does not create any inference of guilt. The defendant has been charged with:

- Count One: Devising and executing a scheme to defraud in which a false and fraudulent representation relating to a bankruptcy proceeding was made in violation of 18 U.S.C. § 157(3) and §(2).
- Count Two: Falsifying and making a false entry relating to the financial affairs of debtors in bankruptcy in violation of 18 U.S.C. § 152(8) and §(2).
- Count Three: Attempting to impede and influence the proper administration of a bankruptcy proceeding by falsifying and making a false entry on a document in violation of 18 U.S.C. §1519 and §(2).
- Count Four: Receiving property from debtors after the filing of a bankruptcy petition with the intent to defeat the laws governing bankruptcy proceedings in violation of 18 U.S.C. §152(5) and §(2).

The defendant has pleaded not guilty to these offenses.

PRESUMPTION OF INNOCENCE - BURDEN OF PROOF

The defendant is presumed to be innocent of the charges. This presumption continues during every stage of the trial and your deliberations on the verdict. It is not overcome unless from all the evidence in the case you are convinced beyond a reasonable doubt that the defendant is guilty as charged. The government has the burden of proving the guilt of the defendant beyond a reasonable doubt.

This burden of proof stays with the government throughout the case. The defendant is never required to prove his innocence or to produce any evidence at all.

DEFENDANT'S RIGHT NOT TO TESTIFY

The defendant has an absolute right not to testify. The fact that the defendant did not testify should not be considered by you in any way in arriving at your verdict.

IMPEACHMENT OF WITNESS - CONVICTIONS

You have heard evidence that Allan Banks has been convicted of four crimes. You may consider this evidence only in deciding whether Allan Bank's testimony is truthful in whole, in part, or not at all. You may not consider this evidence for any other purpose.

WITNESSES REQUIRING SPECIAL CAUTION

You have heard testimony from Allen Banks who has pleaded guilty to offenses arising out of the same occurrence for which the defendant is now on trial. His guilty plea is not to be considered as evidence against the defendant. In exchange for his truthful testimony at trial the government has agreed that it may request a reduced sentence for Allen Banks at the time of his sentencing. You may give his testimony such weight as you feel it deserves, keeping in mind that it must be considered with caution and great care.

SUMMARIES

Certain summaries are in evidence. They truly and accurately summarize the contents of voluminous books, records or documents, and should be considered together with and in the same way as all other evidence in the case.

ELEMENTS OF OFFENSE - Count 1
(18 U.S.C. § 157(3))

To establish the defendant's violation of 18 U.S.C. § 157(3), the government must prove the following propositions beyond a reasonable doubt:

First, that the defendant knowingly devised the scheme to defraud as described in Count One of the indictment;

Second, that the defendant did so knowingly and with the intent to defraud; and

Third, that for the purpose of carrying out the scheme to defraud or attempting to do so, the defendant made a materially false and fraudulent representation, to wit, that the residence of the debtors in Bankruptcy Case No. 03-26176-SK was encumbered by a \$30,000 mortgage in favor of Stephanie Fledderman, concerning and relating to a proceeding under Title 11 of the United States Code.

If you find from your consideration of all the evidence that each of these three propositions has been proved beyond a reasonable doubt, then you should find the defendant guilty in connection with Count One of the indictment.

If, on the other hand, you find from your consideration of all the evidence that any of these propositions has not been proved beyond a reasonable doubt, then you must find the defendant not guilty in connection with Count One of the indictment.

DEFINITIONS - Count 1

Knowingly: When the word “knowingly” is used in these instructions, it means that the defendant realized what he was doing and was aware of the nature of his conduct, and did not act through ignorance, mistake or accident.

Scheme to Defraud: A scheme is a plan or course of action formed with the intent to accomplish some purpose.

In considering whether the government has proven a scheme to defraud by means of false representations, claims and promises, it is essential that one or more of the false representations, claims or promises charged in the portion of the Indictment describing the scheme be proved establishing the existence of the scheme beyond a reasonable doubt. However, the government is not required to prove all of them.

A scheme to defraud is a scheme that is intended to deceive or cheat another and to obtain money or property.

Intent to Defraud: The phrase “intent to defraud” means that the acts charged were done knowingly with the intent to deceive or cheat the victim in order to cause a gain of money or property to the defendant or the potential loss of money or property to another.

Loss: The bankruptcy fraud statute can be violated whether or not there is any loss or damage to the victim of the crime or gain to the defendant.

Materiality: A statement is material if it had the effect of influencing the court, the trustee, or the creditors, or was capable of or had the potential to do so. It is not necessary that the statement actually have that influence or be relied on by the court, the trustee, or the creditors, so long as it had the potential or capability to do so.

Materiality does not require a showing that creditors were harmed by the false statement.

ELEMENTS OF OFFENSE - Count 2
(18 U.S.C. § 152(8))

To establish the defendant's violation of 18 U.S.C. § 152(8), the government must prove the following propositions beyond a reasonable doubt:

First, a bankruptcy proceeding existed under title 11 of the United States Code;

Second, the defendant falsified or made a false entry, to wit, that the debtors' residence was encumbered by a \$30,000 mortgage in favor of Stephanie Fledderman, on documents;

Third, the documents containing that entry affected or related to the property or financial affairs of the debtors; and

Fourth, the defendant acted knowingly and fraudulently.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, then you should find the defendant guilty in connection with Count Two of the indictment.

If, on the other hand, you find from your consideration of all the evidence that any of these propositions has not been proved beyond a reasonable doubt, then you must find the defendant not guilty in connection with Count Two of the indictment.

DEFINITIONS – Count 2

Knowingly: When the word “knowingly” is used in these instructions, it means that the defendant realized what he was doing and was aware of the nature of his conduct, and did not act through ignorance, mistake or accident.

Fraudulently: An act is done fraudulently if done with the intent to deceive any creditor, trustee, or bankruptcy judge.

Loss: The bankruptcy fraud statute can be violated whether or not there is any loss or damage to the victim of the crime or gain to the defendant.

Materiality: A statement is material if it had the effect of influencing the court, the trustee, or the creditors, or was capable of or had the potential to do so. It is not necessary that the statement actually have that influence or be relied on by the court, the trustee, or the creditors, so long as it had the potential or capability to do so.

Materiality does not require a showing that creditors were harmed by the false statement.

ELEMENTS OF OFFENSE – Count 3
(18 U.S.C. § 1519)

To establish the defendant's violation of 18 U.S.C. § 1519, the government must prove the following propositions beyond a reasonable doubt:

First, the defendant falsified or made a false entry, to wit, that the debtors' residence was encumbered by a \$30,000 mortgage in favor of Stephanie Fledderman, on a record and document, to wit, a settlement statement;

Second, the defendant did so with the intent to impede, obstruct or influence the proper administration of a case under title 11 of the United States Code; and

Third, the defendant acted knowingly.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, then you should find the defendant guilty in connection with Count Three of the indictment.

If, on the other hand, you find from your consideration of all the evidence that any of these propositions has not been proved beyond a reasonable doubt, then you must find the defendant not guilty in connection with Count Three of the indictment.

DEFINITIONS - Count 3

Knowingly: When the word “knowingly” is used in these instructions, it means that the defendant realized what he was doing and was aware of the nature of his conduct, and did not act through ignorance, mistake or accident.

ELEMENTS OF OFFENSE - Count 4
(18 U.S.C. § 152(5))

To establish the defendant's violation of 18 U.S.C. § 152(5), the government must prove the following propositions beyond a reasonable doubt:

First, a bankruptcy proceeding existed under title 11 of the United States Code;

Second, the defendant received a material amount of property, to wit, \$13,723.75, from the debtors and did so with the intent to defeat the provisions of title 11 of the United States Code; and

Third, the defendant acted knowingly and fraudulently.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, then you should find the defendant guilty in connection with Count Four of the indictment.

If, on the other hand, you find from your consideration of all the evidence that any of these propositions has not been proven beyond a reasonable doubt, then you must find the defendant not guilty in connection with Count Four of the indictment.

DEFINITIONS – Count 4

Knowingly: When the word “knowingly” is used in these instructions, it means that the defendant realized what he was doing and was aware of the nature of his conduct, and did not act through ignorance, mistake or accident.

Fraudulently: An act is done fraudulently if done with the intent to deceive any creditor, trustee, or bankruptcy judge.

Loss: The Bankruptcy fraud statute can be violated whether or not there is any loss or damage to the victim of the crime or gain to the defendant.

DATE OF CRIME CHARGED

The indictment charges that the offense was committed “on or about” a certain date. The government must prove that the offense happened reasonably close to that date but is not required to prove that the alleged offense happened on that exact date.

JOINT VENTURE

An offense may be committed by more than one person. A defendant's guilt may be established without proof that the defendant personally performed every act constituting the crime charged.

ACTING THROUGH ANOTHER/AIDING AND ABETTING

(a) Any person who knowingly aids, counsels, commands, induces or procures the commission of an offense may be found guilty of that offense. That person must knowingly associate with the criminal activity, participate in the activity, and try to make it succeed.

(b) If a defendant knowingly caused the acts of another, the defendant is responsible for those acts as though he personally committed them.

SELECTION OF FOREPERSON - GENERAL VERDICT

Upon retiring to the jury room, select one of your number as your foreperson. The foreperson will preside over your deliberations and will be your representative here in court.

Forms of verdict have been prepared for you.

[Forms of verdict read.]

Take these forms to the jury room, and when you have reached unanimous agreement on the verdict, your foreperson will fill in, date, and sign the appropriate form.

SEPARATE CONSIDERATION OF CHARGES

Each count of the indictment charges the defendant with having committed a separate offense.

Each count and the evidence relating to it should be considered separately, and a separate verdict should be returned as to each count. Your verdict of guilty or not guilty of an offense charged in one count should not control your decision as to any other count.

COMMUNICATION WITH COURT

I do not anticipate that you will need to communicate with me. If you do, however, the only proper way is in writing, signed by the foreperson, or if he or she is unwilling to do so, by some other juror, and given to the marshal.

DISAGREEMENT AMONG JURORS

The verdict must represent the considered judgment of each juror. Your verdict, whether it be guilty or not guilty, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to re-examine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of your fellow jurors or for the purpose of returning a unanimous verdict.

The twelve of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement which is consistent with the individual judgment of each juror.

You are impartial judges of the facts. Your sole interest is to determine whether the government has proved its case beyond a reasonable doubt.